

JONES DAY

NORTH POINT • 901 LAKESIDE AVENUE • CLEVELAND, OHIO 44114.1190

TELEPHONE: +1.216.586.3939 • FACSIMILE: +1.216.579.0212

DIRECT NUMBER: (216) 586-7345
JRWOOLEY@JONESDAY.COM

September 13, 2019

CM/ECF

The Honorable Pamela Meade Sargent
Magistrate Judge
Western District of Virginia
180 West Main Street
Suite 123
Abingdon, VA 24210

Dear Judge Sargent:

We respectfully submit this letter in response to the Court's Order to Show Cause (ECF #140) dated September 11, 2019, which directed counsel to file a written explanation regarding the redaction error in the Reply Memorandum filed in Support of Defendants' Motion to Dismiss (ECF #135).

We assure the Court that we redacted information in the Reply Memorandum related to grand jury proceedings in good faith. In fact, multiple members of the defense team reviewed the redactions several times prior to filing to make sure grand jury testimony was redacted. In the redacted form filed with the Court, the redacted portions were in fact "blacked out," whether examined in electronic form or printed on paper, in the ordinary course. Unfortunately, we learned that a reporter was able to defeat this redaction process by exploiting a technical weakness, as we understand it, by copying and pasting the redacted text from the filed version on ECF into a new document that enabled the reporter to view the redacted text. This technical weakness in the redaction process was caused by the method of redaction, which involved Microsoft Word and printing to Adobe Acrobat, rather than redaction software our law firm has in place that is specifically designed to avoid such issues. The failure to use this software was an inadvertent oversight. The error was not apparent from the face of the filing, which appeared fully redacted, and thus the error was not detected during review.

In addition, as soon as possible after we learned of the error, counsel notified the Court to remove the defective filing and provided a replacement filing with proper redactions (ECF #138). We also took steps internally to mark and sequester the improperly redacted version to avoid any further dissemination of that version. All current members of the defense team have been instructed to use the appropriate redaction software for all future redacted filings, all new lawyers who may work on this matter will be instructed to use this redaction software, and any


The Honorable Pamela Meade Sargent
September 13, 2019
Page 2

lawyer currently on the team, or who joins in the future, who is not familiar with the redaction software will receive training on its proper use prior to filing any redacted pleading. Additionally, the senior lawyers on the team will make certain that all future redactions in this matter are made with the proper software to avoid such issues in the future.

Lastly, we would like to advise the Court that while our co-counsel at Gentry Locke electronically filed the pleading at issue, the redaction process for that pleading was entirely the responsibility of Jones Day.

We very much regret that this incident occurred and can assure the Court that it will not happen again.

Respectfully submitted,



James R. Wooley

cc: All counsel of record via ECF